(*Skidmore* v. *Swift,* 323 U.S. 134.) Some of the interpretations in subpart D of this part relating to the scope of the exemption provided for retail or service establishments are interpretations of this exemption as it appeared in the original Act before amendment in 1949 and 1961, which have remained unchanged because they were consistent with the amendments. These interpretations may be said to have Congressional sanction because ''When Congress amended the Act in 1949 it provided that pre-1949 rulings and interpretations by the Administrator should remain in effect unless inconsistent with the statute as amended. 63 Stat. 920.'' (*Mitchell* v. *Kentucky Finance Co.,* 359 U.S. 290.)

§ 779.10 Interpretations made, continued, and superseded by this part.

On and after publication of this part in the FEDERAL REGISTER, the interpretations contained therein shall be in effect and shall remain in effect until they are modified, rescinded, or withdrawn. This part supersedes and replaces the interpretations previously published in the FEDERAL REGISTER and Code of Federal Regulations as part 779 of this chapter. Prior opinions, rulings and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Fair Labor Standards Act as amended by the Fair Labor Standards Amendments of 1961 are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn. The interpretations in this part provide statements of general principles applicable to the subjects discussed and illustrations of the application of these principles to situations that frequently arise. They do not and cannot refer specifically to every problem which may be met by retailers in the application of the Act. The omission to discuss a particular problem in this part or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy. Questions on matters not fully covered by this part may be addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210, or to any Regional or District Office of the Division.

SOME BASIC DEFINITIONS

§ 779.11 General statement.

The meaning and application of the provisions of law discussed in this part depend in large degree on the definitions of terms used in these provisions. The Act itself defines some of these terms. Others have been defined and construed in decisions of the courts. In the following sections some of these basic definitions are set forth for ready reference in connection with the part's discussion of the various provisions in which they appear. Some of these definitions and their application are considered in detail in other interpretative bulletins. The application of the others is considered in the sections of this part where the particular provisions containing the defined terms are discussed.

§ 779.12 Commerce.

Commerce as used in the Act includes interstate and foreign commerce. It is defined in section 3(b) of the Act to mean ''trade, commerce, transportation, transmission or communication among the several States or between any State and any place outside thereof.'' (For the definition of ''State'' see § 779.16.) The application of this definition and the kinds of activities which it includes are discussed at length in the interpretative bulletin on general coverage of the Act, part 776 of this chapter.

§ 779.13 Production.

To understand the meaning of ''production'' of goods for commerce as used in the Act it is necessary to refer to the definition in section 3(j) of the term ''produced.'' A detailed discussion of the application of the term as defined is contained in the interpretative bulletin on general coverage of the Act, part 776 of this chapter. Section 3(j) provides that ''produced'' as used in

the Act ''means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.'' (For the definition of ''State,'' see § 779.16.)

§ 779.14 Goods.

The definition in section 3(i) of the Act states that *goods,* as used in the Act, means ''goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.'' The interpretative bulletin on general coverage of the Act, part 776 of this chapter, contains a detailed discussion of the application of this definition and what is included in it.

§ 779.15 Sale and resale.

(a) Section 3(k) of the Act provides that ''Sale'' or ''sell'', as used in the Act, ''includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.'' Since ''goods'', as defined, includes any part or ingredient of goods (see § 779.14), a ''resale'' of goods includes their sale in a different form than when first purchased or sold, such as the sale of goods of which they have become a component part (*Arnold* v. *Kanowsky,* 361 U.S. 388). The Act, in section 3(n), provides one exception to this rule by declaring that ''resale'', as used in the Act, ''shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided,* That the sale is recognized as a bona fide retail sale in the industry.'' A resale of goods is not confined to resale of the goods as such, but under section 3(k) may include an ''other disposition'' of the goods in which they are disposed of in a transaction of a different kind; thus the sale by a restaurant to an airline of prepared meals to be served in flight to passengers whose tickets entitle them to a ''complimentary'' meal is a sale of goods ''for resale''. (*Mitchell* v. *Sherry Corine Corp.,* 264 F 2d 831 (C.A. 4), cert. denied 360 U.S. 934.)

(b) In construing section 3(s)(1) of the Act as it was prior to the 1966 amendments it should be noted that section 3(n) of the prior Act defined ''resale'' by declaring that this term, ''except as used in subsection (s)(1), shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided,* That the sale is recognized as a bona fide retail sale in the industry.'' Thus, although section 3(n) of the prior Act also provided the one exception to the meaning of ''resale'', it made clear that the exception was inapplicable in determining under section 3(s)(1) of the prior Act, ''if such enterprise purchases or receives goods for resale that move or have moved across State lines (not in deliveries from the reselling establishment) which amount in total volume to $250,000 or more''. The application of the inflow test under section 3(s) (1) of the prior Act is discussed fully in subpart C of this part.

§ 779.16 State.

As used in the Act, *State* means ''any State of the United States or the District of Columbia or any Territory or possession of the United States'' (Act, section 3(c)). The application of this definition in determining questions of coverage under the Act's definition of ''commerce'' and ''produced'' (see §§ 779.12, 779.13) is discussed in the interpretative bulletin on general coverage, part 776 of this chapter. This definition is also important in determining whether goods ''for resale'' purchased or received by an enterprise move or have moved across State lines within the meaning of former section 3(s)(1) of the Act (prior to the 1966 amendments) and whether sales of goods or services are ''made within the State'' within the meaning of the retail or service establishment exemption in section 13(a)(2), as discussed in subpart D of this part.